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November 12, 2010

***Via Email and
Certified Mail Return Receipt Requested***

Ms. Barbara Nann, Attorney
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel
Superfund Branch (6RC-S)
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Site Access
Administrative Order on Consent for Time Critical Removal Action
CERCLA Docket No. 06-12-10
San Jacinto River Waste Pits Superfund Site, Harris County, Texas

Dear Ms. Nann:

This letter is written on behalf of International Paper Company ("International Paper") and McGinnes Industrial Maintenance Corporation ("MIMC") in response to your letter to John Cermak, counsel for International Paper, dated November 2, 2010 regarding Site access under the above-referenced Administrative Order on Consent ("AOC"). Your November 2 letter appears to have been written prior to your review of Respondents' November 1, 2010 letter detailing their further efforts to obtain access under the AOC inasmuch as the Respondents' November 1 letter is not acknowledged in your letter.

The November 2 letter makes reference to "Respondents' stated misconceptions of their roles and responsibilities in securing access" under the AOC, but does not explain what those "stated misconceptions" may be. The November 2 letter also makes reference to a letter dated September 10, 2010 regarding access. Possibly you were referring to our September 30, 2010 letter. In any event, you note in your letter that, in your view, "best efforts" to obtain access include the following:

- (1) the payment of reasonable sums of money;
- (2) documentation of the number and types of discussions with the Texas Department of Transportation ("TxDOT") regarding access;

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- (3) a demonstration that Respondents have contemplated and discussed amongst themselves types of consideration they are willing to give to TxDOT for access and provided the documentation to TxDOT for review;
- (4) demonstration of efforts to secure access from all potential access points, i.e., via TxDOT property and water, and, to the extent Respondents believe access by water is not feasible, submission of documentation to EPA by Respondents demonstrating the infeasibility of water access; and
- (5) to the extent access for a laydown area is not secured from Big Star Barge & Boat Company, Inc. ("Big Star"), the submission of an alternative plan and location for storing equipment offsite for the Time Critical Removal Action ("TCRA").

Respondents have demonstrated in their November 1 letter daily efforts during October 2010 to obtain necessary access for the TCRA. These efforts are detailed in the November 1, 2010 letter but can be summarized as follows:

- (1) Respondents have finalized an access agreement with TxDOT for extension of fencing in the TxDOT right of way ("ROW").
- (2) Respondents have provided a copy of their approved health and safety plan for Site workers to TxDOT and have offered to have a plan prepared for the TxDOT ROW. Respondents also sought to facilitate discussions between TxDOT and EPA to address the primary reason why TxDOT was not prepared to grant access for a road on its ROW: its uncertainty about the impact of levels of dioxin detected during sampling on the ROW on the use of the ROW by its employees and others. As noted in the letter, Respondents learned on November 1 that TxDOT was hiring a toxicologist to advise it regarding such matters, a step that will allow TxDOT to evaluate the sampling results.
- (3) Respondents have diligently worked on a draft road access agreement to propose to TxDOT based on access language previously negotiated with TxDOT in prior access agreements (related to the installation of fencing and for sampling and data collection) and have provided specific proposed language to TxDOT regarding remediation of dioxin/furans in the ROW.
- (4) Respondents have obtained approval by TxDOT of a plan for the wetlands delineation and Endangered Species Act ("ESA") survey required to be conducted prior to construction activities on the ROW.
- (5) Respondents have provided a memorandum written by Anchor QEA to EPA explaining why Anchor and Respondents' construction contractor, USA Environment, LP, believe that access to the Site via water is infeasible.

- (6) Respondents have had a number of discussions with and have exchanged a number of emails with Jay Roberts, Big Star's president, regarding issues associated with possible foreclosure of Big Star's property.
- (7) Respondents have negotiated an access agreement with Big Star relating to fencing, soil sampling, and the wetlands delineation/ESA survey, subject to review of Big Star's counsel, and as of November 1, were continuing to follow-up with Mr. Roberts as to when comments or approval from Big Star's counsel might be forthcoming.
- (8) In response to a request from Mr. Roberts, Respondents diligently worked on preparing a separate lease for an equipment laydown and material storage area on the Big Star property in lieu of including provisions for that area in the access agreement, and given the progress made to date, have a good faith belief that the Big Star property will be available to Respondents for the laydown area.
- (9) Respondents have had several discussions with counsel for TxDOT, Rich O'Connell, regarding Big Star's concerns about access across TxDOT's ROW for its billboard tenant and have provided a drawing to Mr. O'Connell showing the area of TxDOT's ROW to which access is needed by Big Star's tenant.

In addition to the above, it is important to note that since the November 1 letter was submitted, Respondents have had productive discussions with Mr. O'Connell regarding the construction of a road in the ROW. Following the call between EPA and TxDOT that took place on November 3 to discuss TxDOT's concerns about worker health and safety in the ROW, Respondents have provided Mr. O'Connell additional information about published risk-based levels for dioxin in residential and industrial settings. They have also provided him with a draft of a license agreement that incorporates their offer regarding remediation and references (as a basis for further discussion) their offer to prepare a worker health and safety plan. On November 8, Respondents had a call with Mr. O'Connell in which he stated that TxDOT was prepared to allow a road to be constructed on the ROW. In that call, he identified a number of terms that TxDOT would require as part of an agreement for the construction of the road. Respondents, being mindful of the time pressures involved, are discussing provisions to be included in a revised version of the license agreement to be provided to TxDOT that addresses the terms proposed by TxDOT.

Respondents have also moved forward in the access discussions with Big Star. On November 3, they received comments from Big Star's counsel regarding the proposed access agreement for fencing and sampling previously approved by Big Star's president, Mr. Roberts, subject to counsel's review. At the request of Big Star's counsel, the access agreement (which was in the form of an addenda to a prior consent to access signed by Big Star) was redrafted and sent to Mr. Roberts and Big Star's counsel. On November 9, 2010, Respondents discussed the lease with Big Star's counsel again. As a result of that discussion, an access agreement for soil sampling, wetlands delineation and Endangered Species Act survey was prepared and sent to Big Star's representatives. Jay Roberts signed and returned that access agreement today. We will

continue to work diligently to address the remaining access issues related to the Big Star property.

The above described efforts address the steps or activities you identified in the November 2 letter as being necessary in order for Respondents to demonstrate "best efforts." Respondents' November 1 letter documented in detail (through the attached chronology and accompanying exhibits) their communications with TxDOT as well as Big Star, and also included a memorandum from David Keith, Ph.D. of Anchor QEA that details the reasons why access via water is not a viable, practical or environmentally appropriate alternative.

With respect to the payment of "reasonable" compensation to TxDOT, TxDOT's counsel, Mr. O'Connell told Respondents early in discussions regarding access that monetary compensation for use of the ROW is not a concern of TxDOT's, and in fact, TxDOT does not wish to establish a precedent that it is prepared to, for a price, allow access to its rights-of-way. Therefore, payment for access has not been a topic of discussion, and was not an element of the recent proposal made by Mr. O'Connell. Prior to the submission of the November 1 letter, Respondents did make a proposal to TxDOT to address TxDOT's concerns about addressing worker health and safety and remediation of dioxins associated with the Site detected in the area in which the road will be located. They are also working on a response to the TxDOT November 8 proposal, one element of which involves a request by TxDOT for reimbursement of future costs to address worker health and safety issues incurred by TxDOT during the period prior to the remediation of dioxins in the ROW to risk-based levels.

With respect to payment of monetary compensation to Big Star, you told us many months ago that EPA does not generally consider monetary compensation to another potentially responsible party ("PRP") to be necessary to demonstrate "best efforts." Although EPA has not yet named Big Star as a PRP, Big Star, as the owner of property on which the hazardous substances from the Site have come to be located, would appear to be a PRP with respect to the Site. Moreover, Respondents have previously entered into three access agreements with Big Star and compensation has never been an issue. Big Star's attorney raised the possibility of rental payments for the first time on Tuesday, November 9, 2010. We are currently in discussions with Big Star regarding its request for payment for access and the use of the Big Star property for a "laydown/storage area."

Respondents are committed to obtaining access for the TCRA and will continue to keep you informed of our efforts and to reach out to you when we see opportunities for EPA to help facilitate our efforts. We also look forward to visiting with you on Friday, November 12, 2010 regarding these access issues.

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Please do not hesitate to call either counsel for International Paper or the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert R. Axe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Albert R. Axe, Jr.

cc: John Cermak
Sonja Inglin
David Keith

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